

TCA § 68-212-224. Voluntary cleanup, oversight and assistance program.

(a)(1) There is hereby established a voluntary cleanup oversight and assistance program for the voluntary cleanup of Brownfield projects. The commissioner may enter into voluntary agreements or consent orders for the investigation and/or remediation of such sites or projects with any willing and able person: provided, however, that a voluntary agreement may not be employed with a person who generated, transported or released contamination that is to be addressed at the site. A person entering into a voluntary agreement or consent order shall submit to the commissioner a summary description of all known existing environmental investigations, studies, reports or documents concerning the site's environmental condition. Such summary description shall include, but shall not be limited to: date of the material; title of the material; person or entity that produced the material; results or conclusions contained in the material; any remedial action recommended including any monitoring and/or maintenance; and, other information which could reasonably be construed to be material to the Commissioner's decision to enter into a voluntary agreement or consent order. Such voluntary agreements or consent orders shall outline the agreed upon investigation, remediation, monitoring, and/or maintenance, and shall be consistent with section 68-212-201 of this part. Such voluntary agreements or consent orders shall address public notice and public input. All activities shall be subject to any otherwise applicable and appropriate zoning, land use regulations and cleanup standards, including without limitation all provisions regarding public notice and opportunity for public input. All such voluntary agreements or consent orders may provide for the reimbursement of the department's oversight cost. These agreements shall not limit liability for contamination of a site occurring after the date of the voluntary agreement or consent order or for contamination not identified and addressed in the voluntary agreement or consent order. No such voluntary agreement or consent order shall be entered into concerning a site listed on the federal National Priorities List, or after a site has been proposed for such listing, without the concurrence of the United States Environmental Protection Agency (EPA). Sites that the United States Environmental Protection Agency has identified and advised the commissioner as eligible to be proposed for listing on the federal National Priorities List will be managed in a cooperative process with the United States Environmental Protection Agency.

(2) For inactive hazardous substance sites, the commissioner has the discretion and is authorized to establish an apportionment of liability consistent with § 68-212-207(b) in a voluntary agreement or consent order. Further, the commissioner may limit the liability of a participant(s) in any voluntary agreement or consent order entered into pursuant to this section. Such a voluntary agreement or consent order may limit the participant's liability to the obligations set forth therein and exempt the participant(s) from any further liability under any statute

administered by the department, for investigation, remediation, monitoring and/or maintenance of contamination identified and addressed in the voluntary agreement or consent order. The commissioner may extend this liability protection to successors in interest or in title to the participant(s), contractors conducting response actions at the site, developers, future owners, tenants, and lenders, fiduciaries or insurers, conditioned upon performance of the voluntary agreement or consent order and compliance with any land use restrictions required thereby; provided, that such liability protection to other persons does not apply to liability that arose prior to the voluntary agreement or consent order. Nothing in this section shall impair the rights of third parties with respect to tort liability claims for damage to person or property arising from the contamination addressed by the voluntary agreements or consent orders.

(3) A person who enters into a voluntary agreement or consent order with the commissioner that contains an apportionment or limitation of liability, pursuant to this section, shall not be liable to third parties for contribution regarding matters addressed in the voluntary agreement or consent order; provided, that the third party was given actual or constructive notice of the voluntary agreement or consent order, and the third party had an actual or constructive opportunity to comment upon the voluntary agreement or consent order. Constructive notice may be accomplished by, among other means, publishing a summary of the voluntary agreement or consent order in a newspaper of general circulation within the geographical area of the site or project at least thirty (30) days prior to the effective date of the agreement or order. For inactive hazardous substance sites, such voluntary agreements or consent orders shall, to the extent provided therein, constitute an approved administrative settlement pursuant to 42 U.S.C. § 9613(f).

(4) Except in an action to enforce a voluntary agreement or consent order, such agreement or order shall not be admissible as evidence, in any suit, hearing or other proceeding, against a person who received liability protection pursuant to this section. Voluntary agreements and consent orders are not admissible as evidence of comparative fault in any third party tort suit, hearing or other proceeding.

(b) There is levied a fee of five thousand dollars (\$5,000) for participation in this program. This fee shall be in addition to and not in lieu of any moneys expended from the remedial action fund and shall be in addition to any other fee assessed pursuant to this part. The commissioner may waive any part, or all, of this fee if the commissioner determines that such waiver serves the public welfare.

(c)(1) The participation fees shall be used to establish a voluntary cleanup oversight and assistance fund. The purpose of this fund is to pay for state oversight of any cleanup efforts.

(2) Any unencumbered funds and any unexpended balance of this fund remaining at the end of any fiscal year shall not revert to the general fund, but shall be carried forward until expended in accordance with the provisions of this part.

(3) Interest accruing on investments and deposits of the voluntary cleanup oversight and assistance fund shall be returned to this fund and remain a part of this fund.

(d)(1) Moneys expended from the remedial action fund for investigation prior to a party's participation in this program shall be recovered and deposited to that fund.

(2) Once a consent order has been entered, the commissioner has the discretion and is authorized to expend moneys from the remedial action fund to pay that portion of the investigation, cleanup, monitoring, maintenance and oversight of an inactive hazardous substance site to the extent such expenditures are not allocated under the consent order to the potentially liable party conducting the investigation and cleanup of the inactive hazardous substance site pursuant to this program. The commissioner is authorized to seek recovery of such expenditures from the remedial action fund from other liable parties in the full amount of their respective allocated share of liability by any legal remedy through the exercise of his powers and duties as established by this part; provided, however, that if the consent order establishes an allocation of liability for the potentially liable party participating in the voluntary program, the commissioner may not assess the participant for a share of liability greater than the allocation established in the consent order.

(e) The criteria for selecting containment and cleanup actions, including monitoring and maintenance options to be followed under the voluntary cleanup and oversight assistance program, shall be those specified in § 68-212-206(d).

(f) In the event a person does not fulfill all the requirements established in a voluntary agreement or consent order, the commissioner may seek to enforce the voluntary agreement or consent order through any legal remedy.

(g) Upon completion of all terms and conditions of a voluntary agreement or consent order under this program, the commissioner shall issue a letter to the participant(s) stating that the

obligations under the voluntary agreement or consent order have been completed and, if appropriate, that no further action will be required of the participant(s). Upon reasonable request of participant(s), the commissioner shall issue from time to time interim letter(s) stating what specific obligations remain to achieve completion.

(h) Any consent order, voluntary agreement, the creation or removal of deed restrictions, and any other final agency action is subject to review pursuant to the Uniform Administrative Procedures Act, codified in Tennessee Code Annotated, Title 4, Chapter 5. When Public Notice is required to be given pursuant to this section, at a minimum, notice shall be sent by certified mail to all local governments having jurisdiction over any part of the subject property and to all owners of adjoining properties.

Amendments. The 1995 amendment deleted the word “by” and substituted a comma in (a), deleted the second sentence of

(d)(1), added new section (d)(2), added new sections (g) and (h).

Effective Dates. Acts 1994, ch. 890, § 15. May 9, 1994.

68-212-225. Notice of land use restrictions.

(a) Upon a determination by the commissioner that land use restrictions are the appropriate remedial action at any remediation, containment, cleanup, closure or Brownfield project, the commissioner shall either:

(1) Order the owner(s) of the site to file or permit the filing of, or

(2) With the consent of the owner(s) of the site, or upon an order issued pursuant to (a)(1) above becoming final, file or cause to be filed, a Notice of Land Use Restrictions in the register of deeds office in the appropriate county(s). A copy of this Notice shall be mailed to all local governments having jurisdiction over any part of the subject property.

(b) Such a Notice of Land Use Restrictions shall be entitled “Notice of Land Use Restrictions,” and shall:

(1) Include a legal description of the site that would be sufficient as a description of the property in an instrument of conveyance;

(2) Identify the location and dimensions of the areas of potential environmental concern with respect to surveyed, permanent benchmarks. Where a site encompasses more than one parcel or tract of land, a composite map or plat showing all parcels or tracts may be recorded;

(3) Identify generally the type, location, and quantity of regulated hazardous substances and regulated substances known to exist on the site; and

(4) Identify specific restrictions on the current or future use of the site.

(c) Land use restrictions may apply to activities on, over, or under the land, including, but not limited to, use of property, use of groundwater, building, filling, grading, excavating, and mining.

(d) The register of deeds shall record the notice and index it in the grantor index under the names of the owners of the land.

(e) After public notice and an opportunity for public input, a Notice of Land Use Restrictions filed pursuant to this section may be made less stringent or canceled by the commissioner if the risk has been eliminated or reduced so that less restrictive land use controls are protective of human health and the environment. The department shall notify all owners of adjoining properties of any proposed changes to present land use restrictions. Such notice shall be sent by certified mail, return receipt requested. If the commissioner determines that the restrictive land use controls can be made less stringent or cancelled, then the commissioner shall send to the register of deeds of each county where the notice is recorded a statement that the hazards have changed or been eliminated. If the commissioner determines that the restrictive land use controls can be made less stringent or cancelled, then the commissioner shall send to the register of deeds of each county where the notice is recorded a statement that the hazards have changed or been eliminated. The commissioner's statement shall contain the names of the owners of the land as shown in the notice and reference the plat book and page where the notice is recorded. The register of deeds shall record the commissioner's statement in the deed books and index it on the grantor index in the names of the owners of the land as shown in the Notice of Land Use Restrictions and on the grantee index in the name "Commissioner of the Department of Environment and Conservation."

(f) Any land use restriction filed pursuant to this section may be enforced by any owner of the land. The commissioner, through issuance of an Order or by means of a civil action, including one to obtain an injunction against present or threatened violations of the restriction, may also enforce any such land use restriction. A land use restriction may also be enforced by any unit of local

government having jurisdiction over any part of the subject property, by means of a civil action without the unit of local government having first exhausted any available administrative remedy. Any person eligible for liability protection under an agreement entered into pursuant to this Act may also enforce a land use restriction. A land use restriction shall not be declared unenforceable due to lack of privity of estate or contract, due to lack of benefit to particular land, or due to lack of any property interest in particular land. Any person who owns or leases a property subject to a land use restriction under this section shall abide by the land use restriction.

68-212-226. Grants or loans from federal or matching funds – Tax increment financing

(1) From any federal funds available to the department and any state funds used as a match to obtain those federal funds, the commissioner may, in his discretion, provide grants and/or loans to municipalities, counties and/or other governmental instrumentalities to conduct screening, investigation, remediation, containment, cleanup and/or closure of inactive hazardous substance sites, solid waste disposal sites or Brownfield projects under the authority of any statute administered by the department.

(2) A Brownfield project shall be deemed to be within the term “project” as that term is defined at Tennessee Code Annotated Section 7-53-101(11). Any local government having jurisdiction over any part of a Brownfield project is authorized to use tax increment financing for such project pursuant to Tennessee Code Annotated Section 13-20-205.

SECTION _____. The provisions of this section shall be subject to the applicable provisions of Title VI of the 1964 Civil Rights Act.

Additional amendments

SECTION 1. Tennessee Code Annotated Section 68-212-202 is amended by adding, in the following new definition:

“Brownfield Project” is the screening, investigation, monitoring, control and/or remediation of any abandoned, idled, under-utilized, or other property whose re-use, growth, enhancement or redevelopment is complicated by real or perceived adverse environmental conditions. Brownfield projects may address sites contaminated by hazardous substances, solid waste, or any other pollutant.

SECTION 2. Tennessee Code Annotated Section 68-212-213 is amended by adding a new section (1) as follows and renumbering the existing sections.

(1) Fails, neglects, or refuses to comply with a land use restriction filed pursuant to Section 68-212-225; or